

**BEFORE THE ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

IN THE MATTER OF:

STEVEN LOCNIKAR, D.O.
Holder of License No. 2669 for the
practice of osteopathic medicine in the
State of Arizona.

**STIPULATION AND CONSENT
ORDER FOR SUSPENSION
OF LICENSE**

STIPULATION

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Steven Locnikar, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Stipulation and the attached Consent Order; and, Respondent is aware of and understands the content of these documents.
2. Respondent understands that by entering into this Stipulation, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the consent order in state or federal court.
3. Respondent understands that this Stipulation and Consent Order will not become effective unless approved by the Board and signed by its Executive Director.
4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public record which will be disseminated as a formal action of the Board.
5. Respondent admits to the statement of facts and conclusions of law contained in the Stipulated Consent Order.

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent administrative proceedings or litigation involving the Board, Respondent and the State of Arizona; and, therefore, said admissions by Respondent are not intended for any other purpose or administrative regulatory proceeding or litigation in another state or federal court.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend this Stipulation or any part of the Consent Order, although said Stipulation has not yet been accepted by the Board and issued by its Executive Director, without first obtaining Board approval.

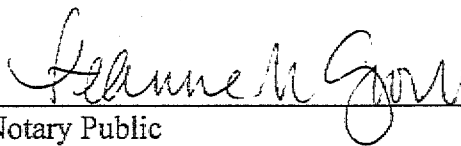
REVIEWED AND ACCEPTED this ____ day of January, 1997.



Steven Locnikar, D.O.

STATE OF ^{Oregon} ~~ARIZONA~~)
^{Yamhill}) ss
County of ~~Maricopa~~)

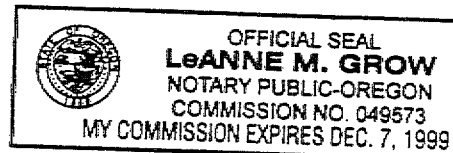
This instrument was acknowledged before me this 6 day of ^{February} ~~January~~, 1997 by the above-named individual.



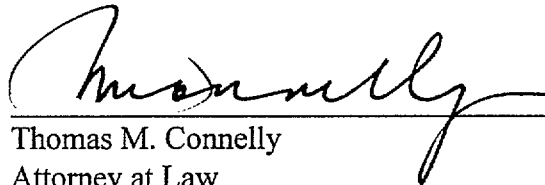
Notary Public

My Commission expires:

12-7-99

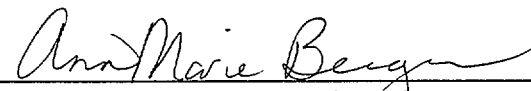


REVIEWED AND APPROVED as to form by counsel for Respondent on this 12th day of
January, 1997.



Thomas M. Connelly
Attorney at Law

REVIEWED AND SIGNED this 13th day of ^{February} ~~January~~, 1997 for the Board by:



Ann Marie Berger, Executive Director
Arizona Board of Osteopathic Examiners in Medicine
and Surgery

BEFORE THE ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

IN THE MATTER OF:)	
)	
STEVEN LOCNIKAR, D.O.)	FINDINGS OF FACT, CONCLUSIONS
Holder of License No. 2669 for the)	OF LAW, AND ORDER OF
practice of osteopathic medicine in the)	SUSPENSION RESOLVING
State of Arizona.)	SUMMARY ORDER
<hr style="width: 40%; margin-left: 0;"/>)	AND FORMAL COMPLAINT

JURISDICTIONAL AND PROCEDURAL STATEMENT

1. Respondent is licensed by the Arizona Board of Osteopathic Examiners in Medicine and Surgery (hereafter "Board") as an osteopathic physician; and, pursuant to A.R.S. § 32-1803, et seq. (as amended), the Board has the authority to conduct an administrative hearing to determine whether the Respondent is unable to safely engage in the practice of medicine and/or whether he has engaged in unprofessional conduct as described and identified more specifically hereafter and whether action should be taken by the Board against Respondent. The Board voted to issue a complaint at its public meeting on December 7, 1996 after the Board conducted an Informal Interview with Respondent, pursuant to A.R.S. § 32-1855(E).

2. On January 16, 1997, at approximately 9:00 a.m., the Board conducted a public meeting via a telephone conference call for the purpose of considering new information regarding violation by Respondent of the Board's previous order, dated May 20, 1996, imposing probationary restrictions on Respondent. Respondent attended said Board meeting and was represented by legal counsel, Thomas M. Connelly. After discussion and consideration of information presented, the Board voted to summarily suspend the Respondent's license to practice as an osteopathic physician in the State of Arizona.

3. At the Board's public meeting on January 22, 1997, the Board considered, heard argument, and discussed the resolution of the pending Board actions against Respondent; and, after deliberation, the Board voted to approve issuance of the following stipulated findings of fact, conclusions of law and consent order.

FINDINGS OF FACT

1. Respondent is a licensee of the Board and holds License No. 2669 for the practice of osteopathic medicine in Arizona.

2. Pursuant to a stipulated consent Order issued on May 20, 1996, Respondent was placed on probation for five years and ordered to comply with the terms and conditions of probation set forth in greater detail in that Order. The May 20, 1996 Probationary Order arose out of Respondent's admission of substance abuse and addiction, i.e., alcohol, marijuana, and cocaine.

3. Pursuant to paragraph 7 of the Board's Consent Order, dated May 20, 1996, Respondent was ordered to "abstain completely from the consumption of alcoholic beverages; and, Respondent shall not consume illicit drugs or take any controlled substances (i.e., prescription only drugs), unless such medication is prescribed for him by his treating physician." Respondent violated the Board's probationary order by consuming alcohol. Specifically, biological fluid testing conducted on the following date was positive for the identified substance:

- A. Urine sample collected on January 2, 1997 at approximately 9:28 a.m. confirmed the presence of ethanol alcohol at a level of .07 percent. Laboratory analysis was conducted by Southwest Laboratories, Inc. and certified by Gary D. Carmack, Ph.D.

Respondent's conduct constitutes unprofessional conduct as defined in A.R.S. § 32-1854(26), i.e., violating a formal order, probation, or stipulation issued by the Board.

4. On January 2, 1997, when Respondent tested positive for a urine ethanol level of .07% while he was scheduled to see numerous patients and in fact did see and provide treatment to approximately 17 patients throughout the course of the day. There is insufficient evidence that Respondent was impaired when he treated patients. Due to insufficient evidence, the Board does not find unprofessional conduct as defined at A.R.S. § 32-1854(3), i.e., practicing medicine while under the influence of alcohol.

5. Pursuant to paragraph 9 of the Board's May 20, 1996 Consent Order, Respondent must, when directed by the Board's designated representative, submit to random biological fluid testing and/or a breathalyzer test within sixty (60) minutes of notification by appearing at a designated collection facility for testing. On the following dates, Respondent failed to timely comply with instructions to submit to testing.

A. On or about 12:00 p.m. on October 3, 1996, Ms. Patty Rustenburg, Board Complaint/Compliance Manager, instructed Respondent by telephone to report and provide a urine sample for testing within sixty (60) minutes at a designated location. Respondent requested an extension of the time period due to an alleged conflict in his schedule (i.e., pre-existing scheduled patient surgery). Based on Respondent's representation of the schedule conflict, Ms. Rustenburg extended the time to submit to biological fluid testing to approximately 4:00 p.m. After the 4:00 p.m. deadline had passed, Respondent communicated with Ms. Rustenburg by telephone that he had lost his wallet, containing his driver's license and did not have any other photo identification to provide to the laboratory personnel to confirm his identity if he reported to the laboratory for testing as instructed. Ms. Rustenburg did not waive the requirement for Respondent to submit to testing due to this excuse. Respondent did not subsequently appear on the aforementioned date in compliance with the instructions to submit to biological fluid testing.

B. On November 19, 1996 at approximately 3:00 p.m., the Board's staff medical consultant, Colleen Hunsaker, D.O., called Respondent's office to inform him of the time and date to appear for biological fluid testing (i.e. butyryl cholinesterase blood test) at St. Luke's clinical laboratory. Dr. Hunsaker was unable to communicate directly with Respondent and left a message with Respondent's message service to page Respondent and respond to her call. By 3:30 p.m. Dr. Hunsaker had not

received a response to her message to Respondent and therefore called his home telephone which was answered by a voice message machine that would not record a message. At 3:50 p.m. Dr. Hunsaker spoke to one of Respondent's office staff (Maggie) who received Dr. Hunsaker's message to Respondent to report to the St. Luke Hospital's clinical laboratory within twenty-four (24) hours to provide a blood sample for testing; and, Dr. Hunsaker was told that Respondent was playing golf and not available by pager. Respondent attempted to comply with the aforementioned messages. On November 20, 1996 Respondent advised the Board's staff by telephone voice messages that he was unable to provide a blood sample at St. Luke's clinical laboratory because laboratory staff did not have a record for Dr. Hunsaker's prior order. By the morning of November 21, 1996, Respondent had not yet provided a blood sample for testing; and, Ms. Rustenburg, spoke by telephone to Respondent's employee (Maggie) to determine Respondent's whereabouts and obtain compliance with the prior instructions to provide a blood sample as well as a urine drug screen. Ms. Rustenburg was informed by Respondent's employee (Maggie) that Respondent had traveled to New York and was expected to return to Phoenix on Sunday, November 24, 1996. However, Respondent asserts that on November 22, 1996 he reported to St. Luke's Hospital and on November 25, 1996 he called St. Luke's Hospital regarding testing and was advised on both dates that there was still no record of a laboratory order from the Board. Board staff memorandum (from Ms. Pulley to Ms. Berger dated November 26, 1996) confirms that St. Luke's did not have a record of the order from Dr. Hunsaker. Ms. Pulley then faxed Dr. Hunsaker's original order to the hospital laboratory on November 26, 1996. Respondent subsequently provided the aforementioned blood sample for analysis on or about November 26, 1996 at approximately 5:00 p.m.

Respondent's conduct constitutes unprofessional conduct as defined at A.R.S. § 32-1854(26), i.e., violating a formal order, probation or stipulation issued by the Board.

6. On or about December 2, 1996, the Staff Executive Committee for Phoenix General Hospital and Medical Center reviewed Respondent's emergency room "on call" availability to determine whether Respondent failed to respond to calls from the hospital's emergency department personnel. Based upon the aforementioned committees' review of the incidents of Respondent's failure to timely and appropriately respond to calls from the emergency department, the Chief of Staff for Phoenix General Hospital, Charles Bell, D.O. informed Respondent that he had forfeited his "on call" schedule privileges.

Furthermore, John Athans, D.O. and Marilyn Van Ryan, R.N. (surgical services manager at Phoenix General Hospital) reported that Respondent on or about January 23, 1996, was scheduled to perform two surgical procedures on separate patients; and, Respondent arrived late for the first surgical procedure (i.e., two and one half hours after the scheduled surgical time). Respondent was observed on the aforementioned occasion by John Athans, D.O. , Rose Wesol, R.N., Ron Sargent, R.N., and Ms. Van Ryan to be sleepy and disoriented while performing the initial surgical procedure, but, there was no reported inappropriate treatment or negligent treatment provided by Respondent on the aforementioned date or due to his failure to promptly respond to calls from the Emergency Department at Phoenix General Hospital.

This conduct when reviewed and considered in its entirety does not constitute unprofessional conduct, as defined by Board statute; however, the Board expresses its concern about the conduct which could have resulted in inappropriate patient treatment.

CONCLUSIONS OF LAW

1. The Arizona Board of Osteopathic Examiners has jurisdiction over the person and subject matter presented by this matter, pursuant to A.R.S. § 32-1800, et seq.
2. The Board has the authority to enter into a stipulated order for final disposition of this case, pursuant to A.R.S. §§ 41-1061(D) and 32-1855.
3. The Board concludes that Respondent engaged in acts of unprofessional conduct as defined in A.R.S. §32-1954(3) and (26).

CONSENT ORDER

Pursuant to the authority vested in the Board by A.R.S. § 32-1855 and A.R.S. § 41-1061(D),
IT IS HEREBY ORDERED THAT:

1. Respondent's Board License Number 2669 for the practice of osteopathic medicine and surgery in the State of Arizona is hereby suspended subject to successful completion of Respondent's in-patient rehabilitation treatment program (hereafter "in-patient program") and reinstatement to practice osteopathic medicine by the Board.

2. Following the suspension, the Respondent shall be placed on probation for five (5) years as directed in this Order.

3. Respondent must enter into an in-patient program for a minimum of ninety (90) days or discharged by the in-patient program. The in-patient program must be physician oriented and approved by the Board. When the in-patient program determines that Respondent has completed the required in-patient program, Respondent, through his in-patient program, must submit a written request to the Board seeking reinstatement of his license which shall be reviewed and considered by the Board at a public meeting. The determination of the Respondent's qualifications for reinstatement of license shall be dependent upon Respondent's compliance with all terms and conditions set forth in this Order and all applicable statutory or administrative rule requirements governing the practice of medicine in the State of Arizona.

4. Respondent must instruct his therapist or physician from the in-patient rehabilitation treatment program to release to the Board all documents and information relating to his treatment.

5. In the event that Respondent fails to satisfactorily complete the in-patient program, he shall be considered to have violated the terms of this Consent Order and Respondent must not resume the practice of medicine; but must remain on suspended license status. Thereafter, all prior or new grounds for disciplinary action against Respondent may be asserted by the Board and formal complaint proceedings initiated.

6. All terms and conditions of Respondent's prior Board probationary orders are incorporated herein as if set forth in entirety; and, if any terms and conditions conflict with this Consent Order, the Board shall resolve said conflict or ambiguity and apply the more stringent requirements. While Respondent is participating in the in-patient program, he will not have to comply with the daily telephone call-in requirements or other provisions of prior probationary orders which are inconsistent with the in-patient treatment.

7. Upon successful completion of an in-patient program recognized and approved by the Board, Respondent must immediately participate in out-patient treatment and therapy with a licensed psychiatrist or psychologist approved by the Board. Respondent must comply with the therapist's recommendation for the frequency of therapy treatment sessions or in-patient treatment at a designated facility. Respondent must inform the Board by letter (mailed within ten days of the date of this Order) of the therapist's name; and, Respondent must undertake and fully cooperate with a program of treatment established by the therapist. In the event Respondent wishes to terminate or change his therapist, he must provide the Board with written notice of his desire for a change; but, Respondent must not discontinue or reduce the frequency of psychotherapy sessions until he has submitted a written request to the Board to modify his treatment or change therapists and obtained Board approval. All psychotropic medications provided to Respondent during his in-patient and out-patient treatment must be supervised by a licensed psychiatrist approved by the Board.

8. It is the responsibility of the Respondent to provide to his in-patient and out-patient therapist(s) with a copy of this Order, and Board staff may cooperate with and disclose all relevant information in the Board's files concerning Respondent. The Respondent's current out-patient treating therapist(s) shall be directed by Respondent to send to the Board a written progress report

every three (3) months; and, Respondent agrees to and must waive any confidentiality concerning this psychotherapy in order that the Board may receive full disclosure of confidential information. The expense of the aforementioned therapy and reports to the Board and/or personal appearances of the therapist at Board proceedings shall be the sole responsibility of the Respondent. The Board's Medical Consultant will maintain regular communication with Respondent's treating therapist(s) to obtain status reports.

9. Respondent may have his license to practice as an osteopathic physician, subjected to additional disciplinary action, including but not limited to suspension or revocation of Board license in the future if:

- A. The Board finds that Respondent does not have the requisite mental, physical and emotional fitness to safely continue the practice of medicine; or,
- B. There are new grounds for finding unprofessional conduct concerning Respondent; or,
- C. Respondent fails to comply fully with the terms and conditions of this Order.

10. Respondent must abstain completely from the consumption of alcoholic beverages; and, Respondent must not consume any medications, including prescription, non-prescription, illicit drugs or take any controlled substances, unless such medication is prescribed for him by his treating physician and the Board's Medical Consultant is provided documentation by the treating physician.

11. Respondent must maintain a monthly log (for the duration of probation) of all medications (prescription and non-prescription) taken by him and such log shall include the following information:

- (a) the name of the medication;
- (b) name of prescribing physician; and

- (c) reason for the medication.

On the first day of each month, Respondent must report by letter to the Board whether or not he is taking or has taken any medications and, if so, a copy of his log reflecting the above information.

12. Respondent shall also as part of his probation:

- A. Submit to and cooperate in any independent medical, psychiatric or psychological evaluation that is ordered by the Board for Respondent and conducted by the Board's designated physician and/or psychologist which shall be paid for by the Respondent; and
- B. Fully comply with those statutes and administrative rules applicable to the practice of osteopathic medicine in the State of Arizona; and,
- C. Appear before the Board, upon receipt of a request by written or telephonic notification from the Board's executive director which shall be given at least five (5) days prior to the Board meeting; and,
- D. Submit to random breathalyzer and biological fluid testing and promptly provide (i.e., within sixty minutes of notification) required biological fluids for testing and said testing shall be done at the Respondent's expense; and, in regard to enforcement of this provision, Respondent must provide written notification to the Board's executive director of the following telephone numbers at which can be routinely contacted directly or promptly receive messages within the required sixty minute time period: business, residence and telephone message service; and,
- E. Obtain, from the Board's staff, a list of Board approved medical laboratories to collect and test his biological fluid samples or perform a breathalyzer, when ordered to submit to testing.

13. In the event Respondent ceases to reside in Arizona, he must give written notice to the Board of his new residence address within twenty (20) days of moving; and, the terms and duration of suspension/probation may be stayed by the Board until Respondent returns to Arizona.

14. Respondent may submit a written request for termination of suspension of his osteopathic medical license after successful completion of his approved inpatient program. The

reinstatement of Respondent's license shall be determined by the Board at a public hearing.

15. Respondent must pay all costs arising from the Board's investigation, informal interview hearings, summary suspension hearing, and formal complaint proceedings concerning this matter (amount to be provided to Respondent by the Board's Executive Director within thirty days of execution of this Consent Order); and, payment of the costs shall be completed within one year from Respondent's resumption of practice. Respondent must pay all biological fluid and breathalyzer or test fees immediately upon receipt of the invoice.

16. The Board and Respondent may agree to and make subsequent modifications to the terms and conditions of this Order.

17. The Board's summary suspension order that was authorized at the Board's January 16, 1997, public meeting is terminated and replaced by this Consent Order; and, the Board withdraws its previous authorization to issue a formal complaint and notice of hearing.

ISSUED AND EFFECTIVE this 13th day of ^{February}~~January~~, 1997.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: Ann Marie Berger
Ann Marie Berger, Executive Director
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Served by personal service or
Certified Mail this 13th day
of ~~January~~, 1997 to:
February

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